

## WETLANDS COUNCIL

### MINUTES

January 10, 2012

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The Wetlands Council met on Tuesday, January 10, 2012 in Rooms 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Ryan Crosbie, Carol Henderson, James Kennedy, Seth Prescott, Russ St. Pierre, Susan Slack, Thomas Sloan, and David Thompson

**Absentees:** Councilors: Larry Ballin, Sharon Champagne

Also present were: Paula Scott, Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 9:00 a.m. with introductions and a quorum present.

1. **Approval of Minutes**

- ***Councilor Thompson made a motion to approve the December 13, 2011 minutes, second by Councilor Crosbie. Motion passed unanimously.***

2. **Public Input:** None

3. **Status of Appeals**

Paula Scott, Appeals Clerk, reviewed the following appeals:

<b>I. New Appeals</b>
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**Docket No. 11-13 WtC – R. Michael Mayo, et. al.**

Subject: 10/18/11 Denial of Request for Reconsideration

Presiding Officer: Not Assigned

Recused: David Thompson

Action needed: Appeal was filed timely on November 17, 2011 but was insufficient. Sent insufficient appeal letter on November 17, 2011 and received revised Petition for Appeal on November 23, 2011. Receipt of revised appeal letter was sent November 28, 2011. Council to act on Petition for Appeal at its January 10, 2012 meeting.

- ***Councilor Henderson made a motion to accept the appeal, second by Councilor Sloan. Motion passed unanimously.***

**Docket No. 11-11 WtC – Robert M. Pinato**

Subject: Rescission of Administrative Order No. 10-025 WD

Presiding Officer: Not assigned

Action needed: Appeal filed timely on 9/29/11. Received Motion to Summarily Dismiss Petition on 10/5/11. Received Objection to Motion to Summarily Dismiss on 10/14/11. Council voted to table this appeal until further action is taken on Docket No.10-20 WtC.

**II. Decision and Orders that need to be written, finalized and issued.**

**Docket No.: 08-04 WtC - Porter Trust**

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball (assigned by AGO on January 5, 2011)

Status: On June 14, 2011, Council voted to deny LBC's Motion to Dismiss. Council also voted to continue deliberations until 60 days after reconsideration of issuance of new permit (permit issued on 4/6/11). Decision and order sent on 7/14/2011. Council requested a status report, specifically on the Reconsideration decision on 10/13/11. On 10/13/11 received via email response to request for status report. By agreement of the parties, the deadline for DES to rule on the Porter's Motion for Reconsideration is October 29, 2011. 11/11/11 Appellant filed an updated status report, the deadline by which NH DES is to rule on the Motion for Reconsideration has been extended by agreement of the parties to November 30, 2011. Order Requesting Legal Memorandum was issued on December 13, 2011.

**Docket No.: 09-07 WtC and 09-08 WtC - Lake Sunapee Protective Association (LSPA) and Town of Newbury**

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson, James Kennedy

Status/Action: Hearings were held on October 12, 2010; October 26, 2010; November 9, 2010; and December 14, 2010. Deliberations were held on March 8 and April 12, 2011. Decision and Order to be prepared within 90 days (July 11, 2011). On 11/16/11 the AG assigned the Chairman as the Hearings Officer. Chairman Kimball has sent a draft to Larry Morse and Attorney English. As there is a complete transcript of the hearing, the Decision and Order does not include the normal descriptive listings. Councilors Sloan and Slack abstained as they did not attend the hearings. Decision & Order was reviewed by the Council. All references to RSA 541 will be corrected to read RSA 541-A.

- ***Motion to accept the Decision and Order made by Councilor St. Pierre, second by Councilor Thompson. Motion passed unanimously.***

**Docket No.: 09-25 WtC - Town of Hooksett**

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Recused: Larry Morse

Status: Decision and Order on Notice of Appeal was issued on December 13, 2011, and mailed.

**Docket No.: 09-35 WtC – Town of Newbury**

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson, James Kennedy

Status/Action: Deliberations held on June 14, 2011. Decision and Order to be prepared within 90 days (Sept. 12, 2011). On 11/16/11 the AG assigned the Chairman as the Hearings Officer. Chairman Kimball has sent a draft to Larry Morse and Attorney English. See the notes on Docket 09-07 and 09-08 above as to the Decision and Order that included 09-35.

**Docket No. 10-08 WtC – Robert Reich Appeal**

Subject: 4/19/10 Decision on Reconsideration, Wetlands File No. 2009-02050

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010.)

Status: Hearing was held on October 11, 2011. Draft Order to be adopted by the Council. Order was adopted by and issued on 11/8/11. 12/7/11 received Appellant's Motion for Reconsideration. Draft Ruling on Motion for Reconsideration is before the Council today 1/10/12, for consideration. Discussion was held and corrections made.

- ***Councilor Sloan made a motion to adopt the Ruling on Motion for Reconsideration, seconded by Councilor Kennedy. Motion passed unanimously.***

### **III. Hearings or PHCs Pending**

#### **Docket No.: 07-09 WtC - Derry Conservation Commission**

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott (assigned by AGO)

Status: PHC was held on July 27, 2011, at 1:00 pm. Hearing scheduled for Dec. 13, 2011 at 9 a.m. per Pre-Hearing Order (PHO) issued on 8/8/11. Received Witness & Exhibit list from Applicant on 9/30/11. Received Appellant's Witness and Exhibit List and Motion to Enlarge Presentation Times on 10/7/11. Objection to Appellant's Witness and Exhibit List was filed on 10/5/11. Motion to Sequester Witnesses and Motion to Exclude from Appellants Allocated Time Used by DES Witnesses to Review the DES Wetlands Bureau file were filed on 10/11/11. 10/17/11 received Co-Appearance for DES and Applicants Objection to Motions to Sequester Witnesses and Exclude Time used by DES Witnesses. 10/21/11 Applicant filed Co-Appearance of Jed Callen. 12/8/11 received Assented to Motion to Continue. 12/8/11 Motion Granted and hearing rescheduled to February 28, 2012 at 9:00 a.m., notice was issued on 12/8/11.

#### **Docket No. 08 – 20 WtC - Anthony Pivaro**

Subject: 02/19/08 Administrative Order No. 08-007 WD

Presiding Officer: David Conley (appointed by AG on 11/17/11)

Status: Received Motion for Reconsideration on 10/26/11, which included copies of insufficient appeal letter dated Mar. 4, 2008, and April 4, 2008 receipt of appeal letter. On Nov. 1, 2011, a letter mailed explaining the Motion for Reconsideration is insufficient and gave 30 days to correct the insufficiencies. Received the corrected filing of Motion for Reconsideration on 11/6/11. Council to vote on Motion. Council granted motion for reconsideration. PHC scheduled for December 12, 2011 at 1 p.m., notice sent on 11/16/11. PHO was issued on 12/12/11 with a hearing scheduled for May 8, 2012 at 9 a.m., notice given per PHO.

#### **Docket No. 09-36 WtC – Brendan and Dana Keegan**

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Presiding Officer: Chip Kimball (assigned on 10/31/11)

Status: Per DES we actually need to schedule a hearing, as PHC was already held. We will need a new Presiding Officer. A PHC scheduled for November 28, 2011, notice issued on 10/19/11. November 29, 2011 received Motion to Continue Pre-hearing conference. Motion was granted and PHC was rescheduled to December 16, 2011 at 9 a.m., notice was issued Nov. 30, 2011. Dec. 16, 2011 Notice given by PHO, hearing scheduled for May 22, 2012, at 9 a.m.

#### **Docket No. 10-04 WtC – Thomas J. Murray Appeal**

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status: The hearing is rescheduled for January 24, 2012 at 9 a.m., notice sent September 21, 2011.

**Docket No. 10-10 WtC – Donald Lee**

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011)

Status: Hearing scheduled for Jan. 10, 2012 per notice of PHO issued on 8/31/11. Received Suggestion of Bankruptcy on December 5, 2011. On 12/6/11 received Withdrawal of Appearance from Appellant's attorney and issued Order for Continuance. Appeal is Stayed due to filing in Bankruptcy Court

**Docket No. 10-14 WtC – Akwa Marina Yacht Club**

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Presiding Officer: Chip Kimball (assigned by AGO on January 26, 2011) Recused himself from being PO, Larry Ballin was assigned 8/19/11. David Conley, Esq. assigned by AG on 12/22/11.

Status: PHO issued on July 27, 2011, hearing scheduled for Nov. 8, 2011 at 9 a.m. Oct. 25, 2011 Appellant filed Witness & Exhibit List. October 26, 2011 DES filed Witness & Exhibit List. On Nov. 2, 2011, received DES Addendum to the Witness & Exhibit List. 11/07/11 Assented-To Motion to Continue was filed. Motion to Continue was granted verbally on 11/7/11 and PO will have written ruling out within a few days. Written ruling on Motion to Continue was issued on November 8, 2011. 11/14/11 received Supplement to Appeal. Hearing Notice was issued on 12/9/11. Rescheduled hearing for 2/14/12 at 9 a.m., Notice sent on 12/30/11. 1/4/12 appellant filed Assented to Motion to Continue. 1/9/12 PO granted Motion to Continue. Need to send new hearing date Notice for April 24, 2012.

**Docket No. 10-29 WtC – Constance Klefos Trust**

Subject: 7/14/10 Denial of Request for Reconsideration of issued permit

Presiding Officer: David Conley (AG assigned on 10/31/11)

Status: Insufficient Appeal-letter sent September 8, 2011. Received revised appeal on 10/7/11. Appeal accepted on 10/11/11, notice issued on 10/18/11. Oct. 27, 2011 Applicant filed Motion to Summarily Dismiss Appeal. 11/3/11 Appellant filed Objection & Answer to the Motion to Summarily Dismiss. Order on Motion to Summarily Dismiss was issued on 12/9/11 and mailed on 12/13/11. PHC scheduled for Jan. 18, 2012 at 10 a.m., Notice sent on 12/13/11.

**Docket No. 10-30 WtC – Dana Belletete**

Subject 08/27/10 Administrative Order No. 10-026 WD

Presiding Officer: David Conley, Esq. was assigned by AG on 12/19/11

Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed however it is insufficient. On 10/31/11 he was sent a receipt of appeal letter with the explanation about what appeared to have happened with the appeal. On 11/3/11 insufficient appeal letter was mailed with 30 days to correct the insufficiencies. 11/28/11 revised Petition for Appeal was received. Receipt of revised appeal letter was sent 12/7/11. Council accepted appeal on 12/13/11, notice sent on 12/16/11. Hearings Officer to schedule PHC.

**Docket No. 11-02 WtC – Norman Davis**

Subject: 01/24/11 Decision on Reconsideration of File #2004-02929(granting amended Wetland application for Norman Davis)

Presiding Officer: David Conley, Esq. was assigned by AG on 12/19/11

Status: This appeal was recently discovered in the records of the prior appeals clerk. It appears that the Petition was timely filed, however, it was insufficient. On 11/22/11 a receipt of appeal letter was sent with an explanation about what appeared to have happened with the appeal and an insufficient appeal letter was also sent. On 11/30/11, a revised Petition for Appeal was received. On 12/7/11 the receipt of revised appeal was sent. Council accepted appeal on 12/13/11, Notice sent on 12/14/11. PO need to schedule PHC.

**Docket No. 11-03 WtC – Joseph and Patricia DeVelis**

Subject: 1/25/11 Administrative Order No. 11-002 WD

Presiding Officer: Ryan Crosbie (assigned by AGO on May 2, 2011)

Status: PHO issued 8/1/11 with Hearing scheduled for November 22, 2011 at 9:00 a.m. 10/24/11 received Assented-To Motion to Extend Time to File Witness & Exhibit Lists. 10/31/11 received Assented-To Motion to Modify Pre-hearing Order. Rulings on Motion to Extend Time & Motion to Modify PHO were issued on Nov. 2, 2011 and mailed on Nov. 3, 2011. With new hearing date set for March 13, 2012 at 9 a.m. 12/27/11 received DES' and Appellant's Witness and Exhibit Lists.

**Docket No. 11-06 WtC – John and Sharon Graham**

Subject: April 11, 2011 Appeal of Administrative Order No. 11-014 WD

Presiding Officer: Will request a new Presiding Officer

Status: Council accepted the appeal letter, notice was sent on July 22, 2011. PHC scheduled for November 7, 2011 at 9 a.m., notice sent on Oct. 17, 2011. PHO was issued on Nov. 7, 2011 with 2<sup>nd</sup> PHC scheduled for Feb. 15, 2012.

**Docket No. 11-07 WtC – Clinton and Cynthia Johnson**

Subject: 4/27/11 Shoreland Impact Permit No. 2011-00115

Presiding Officer: Chip Kimball (assigned by AG on 8/1/11)

Status: Hearing scheduled for February 14, 2012 at 9 a.m. Ruling on Motion to Reconsider PHO and Expanded Ruling on Motion to Strike was issued on 11/9/11. Nov. 14, 2011 issued Ruling on Motion to Compel. Received Appellants' Objection to Evidence on 11/14/11. On 11/15/11 received Applicant's Response to Appellants' Objection. Issued Ruling on Witness and Exhibit Lists on 12/7/11. Received via email Appellant's withdrawal of appeal on 12/15/11. Sent Confirmation of Withdrawal letter on 12/15/11.

**Docket No. 11-09 WtC – Thomas Morrissey and Margaret Russell, et al**

Subject: 1/1/11 Wetlands Permit #2009-01574, Town of Lyme

Presiding Officer: Chip Kimball (Assigned by AG on 9/16/11)

Recused: James Kennedy

Status: Nov. 27, 2011 Ruling was issued on Request to stay, which was mailed on 9/28/11. PHC scheduled for 10/26/11 at 11 a.m., notice issued on 9/29/11. Received Collis Adams' Appearance on 10/26/11. 10/26/11 received Appellant's and Applicant's PHC submissions. Hearing schedule for March 27, 2012 at 8 a.m., notice was given per the PHO on Oct. 26, 2011. Received on 12/12/11 per PHO the Supreme Court's December 8, 2011, Decision in Thomas Morrissey et al vs. Town of Lyme. NHDES and NH F & G. 12/19/11, Appellant sent letter informing the Council that the Appellant has filed for a Motion for Rehearing with the Supreme Court. Hearing is scheduled for March 27, 2012.

**Docket No. 11-12 WtC – George R. and Denise Scholl**

Subject: Denial on Reconsideration for Wetlands Permit #2011-00314

Presiding Officer: David Conley, Esq. was assigned on 12/19/11.

Action needed: Appeal appears to have been filed timely on 10/21/11. Attorney Hanna filed an appearance for the appellant on 10/21/11. Receipt of Appeal letter was issued on 10/21/11. Council accepted appeal on 12/13/11, notice sent on 12/16/11. PO needs to schedule PHC.

**IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

**Docket No.: 09-01 WtC - Kevin Price d/b/a Ossipee Lake Marina**

Subject: 12/9/08 Administrative Order

Presiding Officer: Larry Morse (assigned by AGO on October 27, 2010)\

Recused: Susan Slack

January 10, 2012

Status: The appeal has been tentatively withdrawn, by letter dated March 7, 2011, pending completion of a settlement agreement between the parties. Status request issued 7/15/11 w/ 30 days to respond. Rec'd Status report 8/11/11-within 30 days parties will execute formal settlement and file with the Council. Paula has a call into the appellant's attorney to see where they are with the settlement. Received email from Attorney Roth, they are still working on a settlement agreement and we should be able to close this appeal within 2 to 3 weeks. Received Joint Motion to Approve Settlement Agreement and to Dismiss Appeal on November 18, 2011. Ruling on Joint Motion was issued on December 14, 2011, and mailed on December 15, 2011.

**Docket No.: 09-21 WtC - John Penaskovic**

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD

Recused: Larry Morse

to be sent in September 2011. Received status report on 10/3/11. Appellant wants this appeal to remain open until "Gary Goodspeed completes his portion of the work agreed upon in the restoration plan agreement dated July 1, 2010." John will withdraw this appeal when Mr. Goodspeed receives a letter of compliance and a release of recordation.

**Docket No. 10-20 WtC – Robert Pinato**

Subject: August 19, 2010 Administrative Order, Administrative Order No. 10-025 WD

Presiding Officer: Ryan Crosbie

Status: Received Motion for Reconsideration on 9/29/11. Objection to Motion for Reconsideration was filed on 10/5/11. PO issued ruling on Motion for Reconsideration on Nov. 2, 2011, which was granted. Council discussed/deliberated Reconsideration on 11/8/11. Discussion resulted in Council's belief that this is a matter of law and therefore the PO will decide. Interim Ruling on Reconsideration was issued on 12/1/11, staying the Council's decision on Reconsideration until the legal & venue considerations are defined. Parties are to provide the Council with the Superior Court Decision within 5 days of issuance.

**4. Old Business**

**5. New Business**

**Wetlands Bureau Report**

Collis Adams, Bureau Administrator

Staffing - Executive Secretary, Brenda Constant, retired the end of December. A waiver is needed to fill the position and the waiver has been accepted.

Funding – Wetlands Fee fund is slightly in black this month. Shoreland account is slightly in the red.

Attributed may be to a small turn around in economic conditions.

Very busy on the legislative front. Collis reviewed the bills that DES is in support of and those they are in opposition to.

Follow-up work is still being done on Tropical Storm Irene, with emergency authorizations. Also working on improvements to the databases to integrate the permitting process.

**4. New Business**

**Officer Election –**

- ***Councilor Sloan nominated George(Chip) Kimball as Chair and Ryan Crosbie as Vice Chair, second by Councilor Henderson. Motion passed unanimously.***

**Annual report –**

Has been written by Chairman Kimball and was reviewed by Council.

- ***Councilor Henderson moved to adopt the Annual Report, second by Councilor Sloan. Motion passed unanimously.***

**6. Next Meeting –**

Next hearing is January 24, 2012 at 9 a.m. for Thomas J. Murray Appeal.

Next regular meeting will be Tuesday, February 14, 2012 beginning at 9 a.m. No hearing.

**7. Adjournment**

- ***Councilor Sloan made a motion to adjourn, second by Councilor Thompson. Motion passed unanimously.***

Meeting adjourned at 10:20 a.m.

